



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNR, OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlords under the Residential Tenancy Act (the “Act”), for a Monetary Order for unpaid rent and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the Landlords, G.F. and W.B., and the Tenants, L.D. and T.D., all of whom provided affirmed testimony. All parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondents must be served with a copy of the Application and Notice of Hearing and I confirmed service of these documents as explained below.

The Landlords testified in the hearing that the Application and the Notice of Hearing were personally served on each of the Tenants on July 2, 2017, and the Tenant L.D. confirmed receipt of these documents. As a result, I find that the Tenants were duly served on July 2, 2017, they day the documents were personally served on them.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer only to the relevant facts and issues in this decision.

### Preliminary Matters

#### **Amendment to the Application**

At the start of the hearing, the Landlords requested to withdraw their application for an order of possession as the Tenants vacated the rental unit in July. I amended the application accordingly.

In the hearing the Landlords also requested to amend their application to include additional rent owed in the amount of \$400.00 since the filing of the Application. The Rules of Procedure state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the

time the Application was made. As all parties agreed that the Tenants currently owe \$5,400.00 in rent, the Application was amended accordingly.

### **Attendance**

At the start of the hearing, which was set to commence at 9:00 am September 8, 2017, the only parties present were the Landlords. As the applicants were present at the appointed time, the hearing proceeded as scheduled.

At 9:14 am, the Tenant L.D. joined the hearing and was provided with a brief summary of the proceedings. The Tenant T.D. joined the hearing shortly thereafter.

### **Adjournment Request**

Upon joining the hearing, the Tenant L.D. requested a five minute recess in order to review the documents and evidence. I advised L.D. that the applicants had attended the hearing on-time, and prepared to proceed; and that as a result, the hearing had commenced as scheduled more than 15 minutes prior. I advised L.D. that according to the testimony of the Landlords and the documentary evidence before me, they had been served with the evidence well in advance of the hearing and in accordance with the Rules of Procedure. I advised L.D. that it was their responsibility to arrive at the hearing on-time and prepared to proceed as scheduled, and that as a result, no recess would be granted for them to review the evidence.

Shortly thereafter the L.D. requested an adjournment so they could leave for work. I advised L.D. that according to the oral testimony of the parties and the documentary evidence before me, they had been served with the Notice of Hearing in person on July 2, 2017, some two months prior. I also noted that no contact had been made with the Branch prior to the hearing regarding the need to reschedule. In the hearing I considered the Tenant's request, in conjunction with section 7 of the Rules of Procedure, and the request for an adjournment was denied for the following reasons.

I found that the Tenant's need for the adjournment significantly arose from their failure to attend the hearing promptly as scheduled, without evidence of an exceptional reason for the delay, and from their failure to review the relevant materials prior to the hearing. As the tenants did not dispute the 10 Day Notice and acknowledged in writing that they owed the rent and utilities sought by the Landlord, I also found that the adjournment was unlikely to impact the outcome of the hearing. As a result, the hearing proceeded as scheduled.

### **Evidence**

At the start of the hearing, I advised the Landlords, G.F. and W.B, that I did not have a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"). I advised them that I would accept oral testimony on the service and content of the 10 Day Notice in the

hearing, and that they would have until 4:00 pm on the date of the hearing, to submit a copy to the Residential Tenancy Branch (the "Branch") or I would render my decision without consideration of it.

At 1:27 pm the Branch received by fax, a copy of a 10 Day Notice in relation to this dispute. As it was received by the Branch within the timeframe outlined above, I have accepted the 10 Day Notice into evidence and will consider it in rendering my decision.

During the course of the hearing it became apparent to me that the Landlord wished to rely on documentary evidence that was not before me for consideration, including the tenancy agreement and addendums, a detailed breakdown of the monetary claim, and a copy of an outstanding utility bill. The Landlord asserted that they had submitted the documents to the Branch at the time of their original application on June 26, 2017, and L.D. acknowledged receipt of these documents. However, the Landlords testified that they did not have the documents before them in the hearing and were therefore unable to provide me with the exact details of the contents of these documents.

As the Landlords testified that they had submitted the documents to the Branch as required, the parties were briefly placed on hold while I confirmed whether electronic or physical copies of the missing documents had been received by the Branch. As I was unable to locate the aforementioned documents or any record that they had been received by the Branch, and because the Landlords were not able to provide me with an accurate account of the details of those documents, I advised the parties that they would not be considered in the hearing or my decision. However, I advised the parties that I would still accept oral testimony in the hearing regarding any of the issues for consideration.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

#### Background and Evidence

In the hearing the Landlords testified that they entered into a three year fixed term tenancy with the Tenants on March 1, 2014. They testified that this tenancy agreement was a renewal of a previous agreement, and that the end date for the three year tenancy agreement was February 28, 2017, and that the tenancy continued on a month to month basis thereafter. The parties agreed that these were the terms of the tenancy agreement and that monthly rent was \$1,405.00, due on the first day of the month. The Landlords testified that at the time the 10 Day

Notice was issued, the Tenants owed \$5,100.00 in rent and \$87.00 in utilities for water for May and June, 2017.

The 10 Day Notice dated June 17, 2017, has an effective vacancy date of June 30, 2017, and shows \$5,100.00 owing in outstanding rent, and \$87.00 owing in outstanding utilities. In the hearing the parties agreed that the 10 Day Notice was served personally on the Tenants on June 17, 2017. The 10 Day Notice states that the Tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Although a detailed breakdown of the rent and utilities owed was not before me for consideration in the hearing, and the Landlords were unable to provide these details in their oral testimony, all parties agreed that as of that as of June 25, 2017, the Tenants owed \$5,687.00; \$5,600.00 in outstanding rent, and \$87.00 in outstanding utilities. The parties also agreed that on August 6, 2017, a payment in the amount of \$200.00 was made by the Tenants. Subsequently, the parties agreed that as of the date of the hearing, the Tenants owed \$5,487.00 in outstanding rent and utilities.

The parties also agreed that the Tenants vacated the rental unit at the start of July, 2017.

### Analysis

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent. When a Tenant does not pay rent when due, section 46 of the *Act* permits a Landlord to end the tenancy by issuing a notice to end tenancy. A Tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a Tenant does not pay rent in full or dispute the notice, the Tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 of the *Act*, I find that the Tenants were served with the 10 Day Notice on June 17, 2017, the date it was personally served on them. I also find that the Tenants were obligated to pay the monthly rent of \$1,405.00, on time and in full each month.

Based on the testimony of the parties and the documentary evidence before me, I find that the Tenants have failed to pay the rent owed in full as outlined above within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

Based on the foregoing, I find that the Tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, August 13, 2017.

Pursuant to sections 67 and 72 of the *Act*, I find that the Landlord is entitled to a Monetary Order in the amount of \$5,587.00; \$5,487.00 for unpaid rent and utilities, and \$100.00 for the recovery of the filing fee.

If the Landlord holds a security deposit or a pet damage deposit paid by the Tenants, I also find that the Landlord is entitled to retain from either or both of those deposits, a total amount not greater than the amount of the Monetary Order noted above, in order to offset the monetary compensation owed by the Tenants to the Landlords. If a balance of either deposit remains after the Landlord has deducted the monetary compensation owed to them, the balance of the deposit must be dealt with in accordance with the *Act*.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$5,587.00. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 15, 2017

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Residential Tenancy Branch